



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Hon. H. W. Allen
District Attorney
Hamilton, Texas

Opinion No. O-2759
Re: The authority of the district
court with reference to the commit-
ment of a delinquent child under
the described facts.

Dear Sir:

Your letter of September 18, 1940, requests a legal opinion of this Department in reply to the question stated by you as follows:

"Where a male child under the age of seventeen years is charged with a felony by Grand Jury indictment which further sets out the age of such child to be under seventeen and over twelve, and the same is disposed of as a Juvenile case by the District Court, does the District Court have the authority under the statutes to commit the child to the care and custody of an individual, in the nature of probation, or must the Juvenile be committed to the State Juvenile Training School for Boys, or a County established home or school?"

We assume from your letter that the child involved has been found to be a delinquent child by the court or by a jury.

Article 1084 of the Code of Criminal Procedure provides as follows:

"If an indictment does not allege the age of the accused to be within the juvenile limits, then at any time before announcement of ready, the accused, or the parent, guardian, attorney or next friend of the accused may make and file an affidavit in court setting up that such accused is a male then under seventeen years of age, or is a female then under eighteen years of age. When such affidavit is filed, the judge shall hear evidence on the question of the age of the accused, and if he is satisfied therefrom that the accused, if a male is then under the age of seventeen years, or if a female is then under the age of eighteen years, the judge shall transfer the case to the juvenile docket,

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and proceed to try the child under the same indictment as a delinquent child."

Article 1090 of the Code of Criminal Procedure provides:

"Any juvenile found by the court or jury to be a delinquent child shall be committed to the place or institution provided by law for such child, for an indeterminate period not extending beyond the time when such child shall reach the age of twenty-one years."

Article 1091 of the Code of Criminal Procedure provides:

"In any proceeding in any juvenile court, the court or jury may substitute as a place of commitment any detention home, parental school, or school for girls or boys established by any county, and the further disposition of the juvenile shall be governed as provided for by the laws relating to delinquent children."

Article 1089 of the Code of Criminal Procedure reads:

"When a juvenile is tried by a jury the verdict shall state the time and place of confinement. The proper judgment shall be rendered on the verdict."

You call our attention, also, to Article 2338 of the Revised Civil Statutes which provides as follows:

"In any case of a 'delinquent child,' the court may continue the hearing from time to time and may commit the child to the care of a probation officer, or to the care or custody of any other proper person, and may allow said child to remain in its own home, subject to visitation of the probation officer or other person designated by the court, or under any other conditions that may seem proper and be imposed by the court; or the court may cause the child to be placed in the home of a suitable family, under such conditions as may be imposed by the court, or it may authorize the child to be boarded out in some suitable family, in case provision is made, by voluntary contribution or otherwise, for the payment of the board of such child until suitable provision may be made in a home without such payment; or the court may

commit it to any institution in the county that may care for children that is willing to receive it, or which may be provided for by the State or county, suitable for the care of such children, willing to receive it, or of any State institution for boys or girls, willing to receive such child, or to any other institution in the State of Texas for the care of such children willing to receive it. In no case shall a child proceeded against under this law be committed beyond the age of twenty-one. The order of the court committing such child to the care and custody of any person shall prescribe the length of time and the conditions of such commitment. Such order shall be subject to change by further orders of the court with reference to said child; and the court shall have the power to change the custody of such child or to entirely discharge it from custody whenever, in the judgment of the court, it is to the best interest of the child to do so."

It appears from these statutes that the commitment of a juvenile, after he or she has been found by the court or jury to be a delinquent child, is controlled by the specific provisions of Articles 1090 and 1091 of the Code of Criminal Procedure. The legislative intent that Articles 1090 and 1091 should be all-inclusive is demonstrated by the terminology of Article 1091 authorizing the substitution of certain described places of commitment for those embraced within Article 1090. Neither of these statutes provides for, or contemplates, in our opinion, that the delinquent child may be committed to the care and custody of an individual, either by the court or by the jury in its verdict.

We are mindful of the statements by the Court of Criminal Appeals of Texas in the cases of *Curry v. State*, 296 S.W. 307 and *Ex parte Lassiter*, 18 S.W. (2d) 637, to the effect that in construing Article 1091 of the Code of Criminal Procedure, Article 2338 of the Revised Civil Statutes must also be taken into consideration. After carefully studying these cases in the light of the particular subject matter involved in each of them, we are of the opinion that the court did not hold, or intend to imply that Article 2338 would relieve the specific provisions of Articles 1089, 1090, and 1091 of the Code of Criminal Procedure in the situation involved in your request.

Accordingly, you are respectfully advised that it is the opinion of this Department that where the court or jury

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has found a juvenile to be a delinquent child, the child may be committed only to a place or institution described by Articles 1090 and 1091 of the Code of Criminal Procedure. As stated above, these statutes do not, in our opinion, authorize the court to commit the delinquent child to the care and custody of an individual.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Zollie C. Steakley
Zollie C. Steakley, Assistant

APPROVED OCT 3, 1940
/s/ Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED: OPINION COMMITTEE
BY: , BWB, CHAIRMAN

ZCS:BBB:wb